IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 8TH JANUARY 2007 / 18TH PAUSHA 1928

OP.No. 1947 of 1998(F)

PETITIONER:

S. VISWANATHAN, KOCHUVEEDU, MUTTAPPALAM,
PERUMKUZHI P.O., CHIRAYINKEEZHU, THIRUVANANTHAPURAM.

BY ADV. SRI.PIRAPPANCODE V.SREEDHARAN NAIR
SRI.S.P.ARAVINDAKSHAN PILLAY
SRI.PIRAPPANCODE V.S.SUDHIR

RESPONDENTS:

1. STATE OF KERALA, REP. BY ITS CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE REGISTRAR OF CO-OPERATIVE SOCIETIES, THIRUVANANTHAPURAM.

3. THE PROJECT OFFICER (COIR), CHIRAYINKEEAHU, THIRUVANANTHAPURAM.

4. THE MUTTAPPALAM COIR VYAVESAYA CO-OPERATIVE SOCIETY LTD. NO. T. 705, MUTTAPPALAM, PERUMKUZHI P.O., CHIRAYINKEEZHU, THIRUVANANTHAPURAM, REP. BY ITS SECRETARY.

BY ADV. SRI.K.P.KYLASANATHA PILLAI
SRI.P.SREEKUMAR
SRI.B.PRABHAT KUMAR
SMT.SREEDEVI KYLASANATH
SMT.S.SAUMYA
GOVERNMENT PLEADER SRI.NOBLE MATHEW.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 08/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PETITIONER'S EXHIBITS:
---

EXT.P1 TRUE COPY OF WRITTEN REPLY ON 13-3-1996.

EXT.P2 ORDER DT. 19-4-1997.

EXT.P3 APPEAL FILED BY PETITIONER.

EXT.P4 JUDGMENT DT. 7-10-1997 OF THIS COURT.

EXT.P5 ORDER DT. 6-1-1998.

RESPONDENTS' EXHIBITS:
---

EXT.R4(a) STAMPED RECEIPT DT. 4-9-1993.

EXT.R4(b) RECEIPT DT. 17-11-1993

EXT.R4(c) PETITION ALONG WITH RESIGNATION LETTER SUBMITTED BY FOUR MEMBERS OF THE EXECUTIVE COMMITT OF THE SOCIETY.

[TRUE COPY]

P.S TO JUDGE.

S. Siri Jagan, J.

=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=

O.P. No. 1947 of 1998

=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=

Dated this, the 8th January, 2007.

J U D G M E N T

Petitioner challenges Exts. P2 and P5 orders passed by the 3rd and 1st respondents, which are original order and appellate order passed under the provisions of the Kerala Co-operative Societies Act. The 4th respondent-Society needed 50 cents of land and the Society took a decision to purchase the same. The President of the Society, namely, the petitioner was authorised to find out a suitable land. The petitioner could not find out a land of 50 cents alone, but was able to locate a property measuring one acre of land. Since the seller refused to sell it piecemeal, the petitioner took upon himself the task of finding another purchaser for the balance 50 cents and for this purpose, the petitioner issued an advertisement in the name of the Society. According to the petitioner, that advertisement did not bear any fruit but some how the petitioner was able to find out a purchaser. Accordingly, the 50 cents of land required for the Society was purchased and the balance was sold to the other purchaser. In that transaction, in respect of the balance 50 cents, a profit of Rs. 13,250/- was obtained. Since the transaction was carried out by the petitioner in the name of the Society and the profit so obtained was retained by the petitioner, the 3rd respondent initiated proceedings under Section 68 of the Kerala Co-operative Societies Act for realisation of the amount. The 3rd respondent found that the entire transaction in respect of the balance 50 cents was also done through the Society since the advertisement was made in the name of the Society and the petitioner has used the letter-pad of the Society for the said purpose. Accordingly, by Ext. P2 order, it was directed that a sum of Rs. 13,250/- be recovered from the petitioner who was unauthorisedly retaining the said amount of money with 18% interest from 17-11-1993. The petitioner filed an appeal before the

Government of Kerala under Section 83 of Kerala Co-operative Societies Act, 1969. The same was also dismissed by Ext. P5. The petitioner is challenging Exts. P2 and P5 in these proceedings .

2. In Ext. P5 order, the Government came to the following findings in paragraphs 3 and 4:

> "3. On considering all facts heard and laid before at the time of the hearing, the following are the findings:-
>
> (i) The appellant had misused the Society's letter-head in publishing notice for sale of 50 cents of land and the notice was not on the appellant's personal capacity but on behalf of president of the Society.
>
> (ii) Giving blank receipts affixing signature, the appellant as President of the Society had erred in maintaining his office properly. Being a learned man he should not have given such receipts.
>
> (iii) Before proceedings to purchase land required by the Society, as per rules, the management should have sought sanction from the department. No such action is seen taken by the Society. As president of the Society, it was his responsibility to obtain such sanction. Had this done, no such case under dispute would have materialised.
>
> 4. Even though, the 50 cents of land sold do not own the Society, as the sale was made by the appellant as the President of the society publishing notice for sale on the letter pad of the society, and profit that accrued through that sale should definitely go to the Society itself and not to the appellant alone. The appellant is therefore liable to remit Rs. 13,250/- being the profit accrued on the sale to the society. As society's no direct fund has been misappropriated in this case, taking a lenient view, the Appellant is absolved from the liability of paying surcharge as ordered by the Project Officer, Chirayinkil."

3. The petitioner could not bring forth any material to discredit the above said findings of the Government which is only in confirmation of the findings in Ext. P2 order, although, in Ext. P5 order, the surcharge has been dispensed with. I am satisfied that the entire transaction although made by the petitioner, that was done in his capacity as President of the Society, that too, in the name of the Society, the profit obtained in that transaction should rightly go to

the Society itself and not to the petitioner in his personal capacity.

In the above circumstances, I do not find any merit in the contentions of the petitioner in the original petition and accordingly, the same is dismissed.

Sd/- S. Siri Jagan, Judge.

Tds/